

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dwain Mitchell

Write the full name of each plaintiff.

New York City Department of Education; Daisy

Fontanez, former Principal of MS 415 Wadleigh

Secondary School for Visual and Performing Arts

Write the full name of each defendant. The names listed above must be identical to those contained in Section I.

20 CV 1555
(Include case number if one has been assigned)

Do you want a jury trial?

Yes No

EMPLOYMENT DISCRIMINATION COMPLAINT

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

| | | |
|-------------------------------|------------------------------|-----------|
| Dwain | K | Mitchell |
| First Name | Middle Initial | Last Name |
| 4 E 107th Street, #17B | | |
| Street Address | | |
| New York, New York | NY | 10029 |
| County, City | State | Zip Code |
| (212) 289 - 2967 | dwaink1@yahoo.com | |
| Telephone Number | Email Address (if available) | |

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. (Proper defendants under employment discrimination statutes are usually employers, labor organizations, or employment agencies.) Attach additional pages if needed.

| | | |
|---------------------------------------|---|----------|
| Defendant 1: | New York City Department of Education | |
| Name | | |
| Tweed Courthouse, 52 Chambers Street | | |
| Address where defendant may be served | | |
| New York, New York | NY | 10007 |
| County, City | State | Zip Code |
| Defendant 2: | Daisy Fontanez, former Principal of MS 415 Wadleigh Secondary School for Visual and Performing Arts | |
| Name | | |
| 333 7th Avenue | | |
| Address where defendant may be served | | |
| New York, New York | NY | 10001 |
| County, City | State | Zip Code |

Defendant 3:

Name _____

Address where defendant may be served _____

County, City _____

State _____

Zip Code _____

II. PLACE OF EMPLOYMENT

The address at which I was employed or sought employment by the defendant(s) is:

MS 415 Wadleigh Secondary School for Visual and Performing Arts

Name _____

215 W 114th Street

Address _____

New York, New York

NY

10026

County, City _____

State _____

Zip Code _____

III. CAUSE OF ACTION

A. Federal Claims

This employment discrimination lawsuit is brought under (check only the options below that apply in your case):

- Title VII of the Civil Rights Act of 1964**, 42 U.S.C. §§ 2000e to 2000e-17, for employment discrimination on the basis of race, color, religion, sex, or national origin

The defendant discriminated against me because of my (check only those that apply and explain):

- race: African American
- color: _____
- religion: _____
- sex: Male
- national origin: _____

- 42 U.S.C. § 1981**, for intentional employment discrimination on the basis of race

My race is: **African American**

- Age Discrimination in Employment Act of 1967**, 29 U.S.C. §§ 621 to 634, for employment discrimination on the basis of age (40 or older)

I was born in the year: **1952**

- Rehabilitation Act of 1973**, 29 U.S.C. §§ 701 to 796, for employment discrimination on the basis of a disability by an employer that constitutes a program or activity receiving federal financial assistance

My disability or perceived disability is: _____

- Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12101 to 12213, for employment discrimination on the basis of a disability

My disability or perceived disability is: _____

- Family and Medical Leave Act of 1993**, 29 U.S.C. §§ 2601 to 2654, for employment discrimination on the basis of leave for qualified medical or family reasons

B. Other Claims

In addition to my federal claims listed above, I assert claims under:

- New York State Human Rights Law**, N.Y. Exec. Law §§ 290 to 297, for employment discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status

- New York City Human Rights Law**, N.Y. City Admin. Code §§ 8-101 to 131, for employment discrimination on the basis of actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status

- Other (may include other relevant federal, state, city, or county law): _____

IV. STATEMENT OF CLAIM

A. Adverse Employment Action

The defendant or defendants in this case took the following adverse employment actions against me (check only those that apply):

- did not hire me
- terminated my employment
- did not promote me
- did not accommodate my disability
- provided me with terms and conditions of employment different from those of similar employees
- retaliated against me
- harassed me or created a hostile work environment
- other (specify): _____

B. Facts

State here the facts that support your claim. Attach additional pages if needed. You should explain what actions defendants took (or failed to take) *because of* your protected characteristic, such as your race, disability, age, or religion. Include times and locations, if possible. State whether defendants are continuing to commit these acts against you.

Please see attached.

As additional support for your claim, you may attach any charge of discrimination that you filed with the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Commission on Human Rights, or any other government agency.

V. ADMINISTRATIVE PROCEDURES

For most claims under the federal employment discrimination statutes, before filing a lawsuit, you must first file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) and receive a Notice of Right to Sue.

Did you file a charge of discrimination against the defendant(s) with the EEOC or any other government agency?

- Yes (Please attach a copy of the charge to this complaint.)

When did you file your charge? 4/2/2019

- No

Have you received a Notice of Right to Sue from the EEOC?

- Yes (Please attach a copy of the Notice of Right to Sue.)

What is the date on the Notice? 1/9/2020

When did you receive the Notice? 1/11/2020

- No

VI. RELIEF

The relief I want the court to order is (check only those that apply):

- direct the defendant to hire me
 direct the defendant to re-employ me
 direct the defendant to promote me
 direct the defendant to reasonably accommodate my religion
 direct the defendant to reasonably accommodate my disability
 direct the defendant to (specify) (if you believe you are entitled to money damages, explain that here)

Reverse my "Ineffective" rating, restore my salary, back pay, and allow me to retire with full retirement benefits and medical benefits.

VII. PLAINTIFF'S CERTIFICATION

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

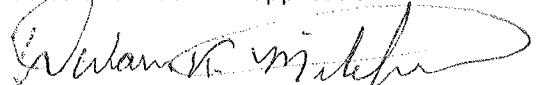
2/20/20

Dated

Dwain

K

Plaintiff's Signature



First Name

Middle Initial

Last Name

4 East 107th Street, Apt. 17 B

Street Address

New York, New York

NY

10029

County, City

State

Zip Code

(212) 289 - 2967

dwaink1@yahoo.com

Telephone Number

Email Address (if available)

I have read the attached Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.

Addendum to Federal Complaint for Dwain Mitchell @ 2/20/20

1. I was employed by the New York City Department of Education (DOE) from November 30, 1994 and worked at the Wadleigh Secondary School for the Performing and Visual Arts at the time of my discontinuance on June 25, 2018.
2. I am African American and am currently 67 years old.
3. I was targeted and discriminated against by Principal Daisy Fontanez and Superintendent Ilene Altschul based on being an older, African American male in the 2016-17 and 2017-18 school years. I believe I have been the victim of age, race, and gender discrimination by the Wadleigh administration at DOE.
4. There were five teachers, Ashtok Bhati, Kevin Johnson, Thomas Chirgwin, Gustav Kome, and myself, who were removed/dismissed/eliminated from teaching at Wadleigh who were age 60 years or older, male, men of color, and earned salaries over \$100,000 a year.
5. I was retaliated against by my school administration for speaking out about my classroom and school issues during October 2017. I had no ICT Co-Teacher, no Administrative support, no help with problem students, and there was no available Dean or Safety Officers at the school.
6. I was not given the support of an additional ICT Teacher in both 2nd Period 7th Grade Social Studies, and 9th Period 9th Grade Global, for the entire 2017-2018 school year as required by law.
7. Despite the lack of support from administration, 95% of my students passed on to the next grade, all of my seniors graduated, 2 of my students scored the highest Regents Test Scores in Social Studies at Wadleigh, 2 of my Special Education Students scored the highest Regents Global for Wadleigh, and 2 Art Students received full scholarships for their MOMA displayed artwork for photographic creativity.
8. I received an Ineffective rating for my Annual Teacher Performance Review for 2016-2017 school year from Principal Fontanez, inconsistent with the results exhibited by my students.
9. I appealed my "Ineffective" rating that Principal Fontanez gave me for the 2016 – 2017 school year. At my Appeals Hearing held at the DOE in Brooklyn on 2/26/2018, there were many disagreements about why there were omissions of my specific MOTP component questions.
10. I was also retaliated against for giving sworn testimony to the DOE Office of Special Investigations in support of teacher Adalaida Kavaja. My sworn testimony disputed Wadleigh Administration's alleged accusations against her that she cheated by giving students test answers during a Regents Test in January 2017. Ms. Kavaja and I were thereafter both discontinued on 6/25/2018.
11. I was further retaliated against for creating a YouTube video on 3/18/2018, called "Save Wadleigh" demanding the school remain open and Principal Fontanez and Superintendent Altschul be removed from Wadleigh due to poor management, teacher displeasure, and community outrage with them. Upon information and belief, subsequently, both Principal Fontanez and Superintendent Altschul were removed due to poor management in August 2018.

12. Being discriminated and retaliated against has adversely affected my health, resulting in emergency admittance for cardiological concerns on 6/22/18, sleep apnea, anxiety, and insomnia. It also has deprived me of health insurance and severely negatively impacted my pension and income.

13. I also believe I was denied due process as I was not given a Section 3020-a tenure hearing before being taken off payroll in June 2018. I believe I had tenure by estoppel because I had worked as a full time substitute teacher in a high school under my social studies license in the 2014-15 and 2015-16 school year. I was formally appointed at Wadleigh in the 2017-18 and 2018-19 school year.

DISMISSAL AND NOTICE OF RIGHTS

To: Dwain K. Mitchell
4 East 107th Street, #17B
New York, NY 10029

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

16G-2019-03394

Holly M. Shabazz,
State & Local Program Manager

(929) 506-5316

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

Other (briefly state) Charging party wishes to pursue matter in Federal District court

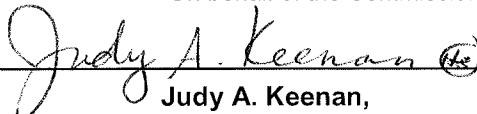
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission


Judy A. Keenan
District Director (Acting)

Enclosures(s)

January 9, 2020y

(Date Mailed)

cc:

Attn: Legal Department
CITY OF NEW YORK, DEPARTMENT OF EDU
Office of the General Counsel
52 Chambers Street, Room 308
New York, NY 10007

Bryan D. Glass, Esq.
Glass & Hogrogian LLP
85 Broad Street, 18th floor
New York, NY 10004

**New York State Division of Human Rights
Employment Complaint Form**

| | | |
|--|------------------|------------------------------------|
| 1. Your contact information: | | |
| First Name Dwain | | Middle Initial/Name Kerron |
| Last Name Mitchell | | |
| Street Address/ PO Box 4 East 107th Street | | Apt or Floor #: 17B |
| City New York | | State NY Zip Code 10029 |
| 2. Regulated Areas: You believe you were discriminated against in the area of: | | |
| <input checked="" type="checkbox"/> Employment (<i>including paid internship</i>) <input type="checkbox"/> Labor Organization <input type="checkbox"/> Apprentice Training <input type="checkbox"/> Employment Agencies <input type="checkbox"/> Internship (<i>unpaid only</i>) <input type="checkbox"/> Licensing <input type="checkbox"/> Volunteer Firefighting (<i>excludes disability, age, domestic violence victim status, arrest, conviction, genetic history</i>) | | |
| 3. You are filing a complaint against: | | |
| Employer Name Department of Education | | |
| Street Address/ PO Box 65 Court Street | | |
| City Brooklyn | | State NY Zip Code 11201 |
| Telephone Number: (718) 935 - 2000 Ext. | | |
| In what county or borough did the violation take place? New York | | |
| Individual people who discriminated against you: | | |
| Name: Daisy Fontanez | Title: Principal | |
| Name: _____ | Title: _____ | |
| If you need more space, please list them on a separate piece of paper. | | |
| 4. Date of alleged discrimination (must be within one year of filing): | | |
| The most recent act of discrimination happened on: <u>7</u> <u>25</u> <u>2018</u> month day year | | |
| 5. For employment and internships, how many employees does this company have? | | |
| <input type="checkbox"/> 1-3 <input type="checkbox"/> 4-14 <input type="checkbox"/> 15-19 <input checked="" type="checkbox"/> 20 or more <input type="checkbox"/> Don't know | | |
| 6. Are you currently working for this company? | | |
| <input type="checkbox"/> Yes. Date of hire: _____ month day year | | What is your position? |
| <input checked="" type="checkbox"/> No. Last day of work: <u>6</u> <u>22</u> <u>2018</u> month day year | | What was your position? Teacher |
| <input type="checkbox"/> I was never hired. Date of application: _____ month day year | | What position did you apply for? |

7. Basis of alleged discrimination:

Check **ONLY** the boxes that you believe were the reasons for discrimination. Please look at page 2 of "Instructions" for an explanation of each type of discrimination.

| | |
|--|--|
| <input checked="" type="checkbox"/> Age: Date of Birth: <u>11/16/1952</u> | <input type="checkbox"/> Military Status: <input type="checkbox"/> Active Duty <input type="checkbox"/> Reserves |
| <input type="checkbox"/> Arrest Record (resolved in your favor or youthful offender record or sealed conviction record) | <input type="checkbox"/> National Origin: Please specify: _____ |
| <input type="checkbox"/> Conviction Record | <input type="checkbox"/> Predisposing Genetic Characteristic: Please specify: _____ |
| <input type="checkbox"/> Creed/ Religion: Please specify: _____ | <input type="checkbox"/> Pregnancy-Related Condition: Please specify: _____ |
| <input type="checkbox"/> Disability: Please specify: _____ | <input checked="" type="checkbox"/> Race/Color or Ethnicity: Please specify: <u>African American</u> |
| <input type="checkbox"/> Domestic Violence Victim Status | <input type="checkbox"/> Sexual Orientation: Please specify: _____ |
| <input type="checkbox"/> Familial Status: Please specify: _____ | <input checked="" type="checkbox"/> Sex: Please specify: <u>Male</u> Specify if the discrimination involved: <input type="checkbox"/> Pregnancy <input type="checkbox"/> Gender Identity <input type="checkbox"/> Transgender Status <input type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> Marital Status: Please specify: _____ | |

If you believe you were treated differently after you filed or helped someone file a discrimination complaint, participated as a witness to a discrimination complaint, or opposed or reported discrimination due to any category above, check below: I created a video opposing the school closure and I submitted a written rebuttal regarding an "Ineffective" job review.

Retaliation: How you did you oppose discrimination: _____

8. Acts of alleged discrimination: What did the person/company you are complaining against do? Check all that apply

| | | | |
|--|--|--|--|
| <input checked="" type="checkbox"/> Refused to hire me | <input type="checkbox"/> Denied me an accommodation for my disability or pregnancy-related condition | <input type="checkbox"/> Denied me leave time or other benefits | <input checked="" type="checkbox"/> Harassed/ intimidated me (other than sexual harassment) |
| <input checked="" type="checkbox"/> Fired me/laid me off | <input checked="" type="checkbox"/> Denied me overtime benefits | <input type="checkbox"/> Sexually harassed or intimidated me | <input type="checkbox"/> Did not call back after lay-off |
| <input type="checkbox"/> Demoted me | <input type="checkbox"/> Paid me a lower salary than other co-workers doing the same job | <input type="checkbox"/> Gave me different or worse job duties than other workers doing the same job | <input type="checkbox"/> Denied me services/treated differently by employment agency |
| <input type="checkbox"/> Suspended me | <input type="checkbox"/> Denied me an accommodation for my religious practices | <input checked="" type="checkbox"/> Gave me a disciplinary notice or negative performance review | <input type="checkbox"/> Unlawful inquiry, or limitation, specification or discrimination in job advertisement |
| <input type="checkbox"/> Denied me training | <input type="checkbox"/> Denied me promotion/ pay raise | <input type="checkbox"/> Denied a license by a licensing agency | <input checked="" type="checkbox"/> Other: Age and Gender Discrimination |

9. Description of alleged discrimination

Tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory. TYPE OR PRINT CLEARLY.

If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. **DO NOT WRITE IN THE MARGINS OR ON THE BACK OF THIS FORM.**

Notarization of Complaint

Based on the information contained in this form, I charge the herein named respondent(s) with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

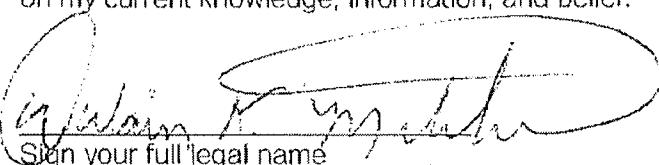
By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment). This complaint will protect my rights under federal law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice.

PLEASE INITIAL: DKM

I swear under penalty of perjury that I am the complainant herein; that I have read (or have had read to me) the foregoing complaint and know the contents of this complaint; and that the foregoing is true and correct, based on my current knowledge, information, and belief.



Sign your full legal name

D. Wain M. Mitchell

Subscribed and sworn before me
This 2nd day of April, 2019


Signature of Notary Public

County: PACI Commission expires:

Notary Public, State of New York
No. 011A037097
Qualified in Niagara County
Commission Expires Feb. 16, 2029

Please note: Once this form is completed, notarized, and returned to the New York State Division of Human Rights, it becomes a legal document and an official complaint with the Division.

Additional Information

This page is for the Division's records and will remain confidential and will not be sent to the company or person(s) whom you are filing against.

1. Contact Information

| | |
|--|---|
| My primary telephone number: <u>(212) 289 - 2967</u> | My secondary telephone number: <u>(917) 279 - 6075</u> |
| My email address: <u>dwaink1@yahoo.com</u> | Date of birth: <u>11/16/1952</u> |
| Contact person: (<i>Someone who does not live with you but will know how to contact you if the Division cannot reach you</i>) <u>Paul McIntosh</u> Name: _____ Telephone number: <u>(646) 436 - 2588</u> Address: _____ Email address: <u>griotpaul@yahoo.com</u> Relationship to me: <u>Co-Worker</u> | |

2. Special Needs

I am in need of:

- Interpretation (if so what language?): _____
- Accommodations for a disability: _____
- Privacy. Keep my contact information confidential as I am a victim of domestic violence
- Other: _____

3. Settlement / Conciliation

To settle this complaint, I would accept: (*Explain what you want to happen as a result of this complaint. Do you want a letter of apology, your job back, lost wages, an end to the harassment, etc.?*)
Complaint/Discontinuance removed from my file, "Ineffective" reversed, job status restored, salary replenished, placed as an ATR, retire 6/2020, pay into teacher's retirement, retire with full pay, benefits, medical, etc., receive 25% pay increase in September 2019 and retire with a good record.

4. Witnesses (information about witnesses may be shared with the parties as necessary for the investigation)

The following people saw or heard the discrimination and can act as witnesses:

Name: Paul McIntosh Title: Librarian
 Telephone Number: (646) 436 - 2588 Relationship to me: Co-worker

What did this person witness?

Observed discriminatory actions towards me, retaliatory responses directed at me and the negative feedback I continued to receive from the Principal and Superintendent.

Name: _____ Title: _____
 Telephone Number: () - Relationship to me: _____

What did this person witness?

5. Did you report or complain about the discrimination to someone else? Yes No

If yes, how exactly did you complain about the discrimination? (To whom did you complain?)

Date you reported or complained about discrimination:

month day year

What happened after you complained?

If you did not report the discrimination, please explain why:

6. Were other people treated the same as you? How?

(For example, people who were harassed by the same manager, disciplined or terminated for the same reasons, did not receive an accommodation for the same reasons, etc.).

If you are complaining about discrimination relating to race, national origin, age, religion, etc. please describe their races, national origins, religions, etc.

7. Were other people treated better than you? How?

(For example, people who were not fired for doing the same thing you were fired for, people who were doing the same job but making more money, etc.).

If you are complaining about discrimination relating to race, national origin, age, religion, etc. please describe their races, national origins, religions, etc.

Addendum to SDHR Complaint for Dwain Mitchell

1. I was employed by the New York City Department of Education (DOE) from November 30, 1994 and worked at the Wadleigh Secondary School for the Performing and Visual Arts at the time of my discontinuance on June 25, 2018.
2. I am African American and am currently 66 years old.
3. I was targeted and discriminated against by Principal Daisy Fontanez and Superintendent Ilene Altschul based on being an older, African American male. I believe I have been the victim of age, race, and gender discrimination by the Wadleigh administration at DOE.
4. There were five teachers, Ashtok Bhati, Kevin Johnson, Thomas Chirgwin, Gustav Kome, and myself, who were removed/dismissed/eliminated from teaching at Wadleigh who were age 60 years or older, male, men of color, and earned salaries over \$100k a year.
5. I was retaliated against by my school administration for speaking out about my classroom and school issues during October 2017. I had no ICT Co-Teacher, no Administrative support, no help with problem students, and there was no available Dean or Safety Officers at the school.
6. I was not given the support of an additional ICT Teacher in both 2nd Period 7th Grade Social Studies, and 9th Period 9th Grade Global, for the entire 2017-2018 school year as required by law.
7. Despite the lack of support from administration, 95% of my students passed on to the next grade, all of my seniors graduated, 2 of my students scored the highest Regents Test Scores in Social Studies at Wadleigh, 2 of my Special Education Students scored the highest Regents Global for Wadleigh, and 2 Art Students received full scholarships for their MOMA displayed artwork for photographic creativity.
8. I received am Ineffective rating for my Annual Teacher Performance Review for 2016-2017 school year from Principal Fontanez, inconsistent with the results exhibited by my students.
9. I appealed my "Ineffective" rating that Principal Fontanez gave me for the 2016 – 2017 school year. At my Appeals Hearing held at the DOE in Brooklyn on 2/26/2018, there were many disagreements about why there were omissions of my specific MOTP component questions.
10. I was also retaliated against for giving sworn testimony to the DOE Office of Special Investigations in support of teacher Adalaida Kavaja. My sworn testimony disputed Wadleigh Administration's alleged accusations against her that she cheated by giving students test answers during a Regents Test in January 2017. Ms. Kavaja and I were thereafter both discontinued on 6/25/2018.
11. I was further retaliated against for creating a YouTube video on 3/18/2018, called "Save Wadleigh" demanding the school remain open and Principal Fontanez and Superintendent Altschul be removed from Wadleigh due to poor management, teacher displeasure, and community outrage with them.
12. Being discriminated and retaliated against has affected my health, resulting in emergency admittance for cardiological concerns on 6/22/18, sleep apnea, anxiety, and insomnia.

JS 44C/SDNY
REV. 06/01/17

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS
Dwain MitchellDEFENDANTS
New York City Department of Education; Daisy Fontanez, former Principal of MS 415 Wadleigh Secondary School for Visual and Performing ArtsATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Pro Se, 4 East 107th Street, #17B, New York, NY 10029
(212) 289 - 2967ATTORNEYS (IF KNOWN)
James E. Johnson, c/o Corporation Counsel of the City of New York, 100 Church Street, New York, NY 10007CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Employment discrimination on the basis of race and sex in violation of Title VII of the Civil Rights Act of 1964, 42 USC Sect. 2000e-17; 42 USC Sect. 1981, age discrimination in violation of ADEA, 29 USC Sect. 621 to 634.

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No Yes

Judge Previously Assigned

If yes, was this case Vol. Invol. Dismissed. No Yes If yes, give date _____ & Case No. _____

IS THIS AN INTERNATIONAL ARBITRATION CASE?

No Yes

(PLACE AN [X] IN ONE BOX ONLY)

NATURE OF SUIT

| TORTS | | | ACTIONS UNDER STATUTES | | | |
|--|--|---|---|----------------------------|--|---------------------------------|
| CONTRACT | PERSONAL INJURY | PERSONAL INJURY | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
| [] 110 INSURANCE | [] 310 AIRPLANE | [] 367 HEALTHCARE/PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY | [] 625 DRUG RELATED SEIZURE OF PROPERTY | [] 422 APPEAL | [] 375 FALSE CLAIMS | |
| [] 120 MARINE | [] 315 AIRPLANE PRODUCT LIABILITY | [] 365 PERSONAL INJURY PRODUCT LIABILITY | 21 USC 881 | [] 28 USC 158 | [] 376 QUI TAM | |
| [] 130 MILLER ACT | [] 320 ASSAULT, LIBEL & SLANDER | [] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY | [] 690 OTHER | [] 423 WITHDRAWAL | [] 400 STATE REAPPORTIONMENT | |
| [] 140 NEGOTIABLE INSTRUMENT | [] 330 FEDERAL EMPLOYERS' LIABILITY | | | | [] 410 ANTITRUST | |
| [] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT | [] 340 MARINE | PROPERTY RIGHTS | [] 820 COPYRIGHTS | [] 430 BANKS & BANKING | [] 440 DEPORTATION | |
| [] 151 MEDICARE ACT | [] 345 MARINE PRODUCT LIABILITY | PERSONAL PROPERTY | [] 830 PATENT | [] 450 COMMERCE | [] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO) | |
| [] 152 RECOVERY OF DEFECTUALTED STUDENT LOANS (EXCL VETERANS) | [] 350 MOTOR VEHICLE | [] 370 OTHER FRAUD | [] 835 PATENT-ABBREVIATED NEW DRUG APPLICATION | [] 480 CONSUMER CREDIT | [] 490 CABLE/SATELLITE TV | |
| [] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS | [] 355 MOTOR VEHICLE PRODUCT LIABILITY | [] 371 TRUTH IN LENDING | [] 840 TRADEMARK | SOCIAL SECURITY | | |
| [] 160 STOCKHOLDERS SUITS | [] 360 OTHER PERSONAL INJURY | [] 380 OTHER PERSONAL PROPERTY DAMAGE | LABOR | [] 861 HIA (1395ff) | [] 850 SECURITIES/ COMMODITIES/ EXCHANGE | |
| [] 190 OTHER CONTRACT | [] 362 PERSONAL INJURY - MED MALPRACTICE | [] 385 PROPERTY DAMAGE PRODUCT LIABILITY | [] 710 FAIR LABOR STANDARDS ACT | [] 862 BLACK LUNG (923) | | |
| [] 195 CONTRACT PRODUCT LIABILITY | ACTIONS UNDER STATUTES | PRISONER PETITIONS | [] 720 LABOR/MGMT RELATIONS | [] 863 DIWC/DIWV (405(g)) | [] 864 SSID TITLE XVI | |
| [] 196 FRANCHISE | CIVIL RIGHTS | [] 463 ALIEN DETAINEE | [] 740 RAILWAY LABOR ACT | [] 865 RSI (405(g)) | [] 870 TAXES (U.S. Plaintiff or Defendant) | [] 890 OTHER STATUTORY ACTIONS |
| REAL PROPERTY | [] 440 OTHER CIVIL RIGHTS (Non-Prisoner) | [] 510 MOTIONS TO VACATE SENTENCE | [] 751 FAMILY MEDICAL LEAVE ACT (FMLA) | [] 871 IRS-THIRD PARTY | [] 891 AGRICULTURAL ACTS | |
| [] 210 LAND CONDEMNATION | [] 441 VOTING | 28 USC 2255 | [] 790 OTHER LABOR LITIGATION | 26 USC 7609 | [] 893 ENVIRONMENTAL MATTERS | |
| [] 220 FORECLOSURE | [X] 442 EMPLOYMENT | PRISONER CIVIL RIGHTS | [] 791 EMPL RET INC SECURITY ACT (ERISA) | | [] 895 FREEDOM OF INFORMATION ACT | |
| [] 230 RENT LEASE & EJECTMENT | [] 443 HOUSING/ACCOMMODATIONS | [] 550 CIVIL RIGHTS | IMMIGRATION | | [] 896 ARBITRATION | |
| [] 240 TORTS TO LAND | [] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT | [] 555 PRISON CONDITION | [] 462 NATURALIZATION APPLICATION | | [] 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION | |
| [] 245 TORT PRODUCT LIABILITY | [] 446 AMERICANS WITH DISABILITIES - OTHER | [] 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT | [] 465 OTHER IMMIGRATION ACTIONS | | [] 950 CONSTITUTIONALITY OF STATE STATUTES | |
| [] 290 ALL OTHER REAL PROPERTY | [] 448 EDUCATION | | | | | |

Check if demanded in complaint:

 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13?

IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

(PLACE AN X IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|---|--|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from (Specify District) | <input type="checkbox"/> 6 Multidistrict Litigation (Transferred) | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge |
| <input type="checkbox"/> a. all parties represented | | | <input type="checkbox"/> 8 Multidistrict Litigation (Direct File) | | | |
| <input type="checkbox"/> b. At least one party is pro se. | | | | | | |

(PLACE AN X IN ONE BOX ONLY)

- 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP BELOW.

(U.S. NOT A PARTY)

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

| CITIZEN OF THIS STATE | PTF [] 1 | DEF [] 1 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | PTF [] 3 | DEF [] 3 | INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE | PTF [] 5 | DEF [] 5 |
|--------------------------|--------------|--------------|---|--------------|--------------|---|--------------|--------------|
| CITIZEN OF ANOTHER STATE | [] 2 | [] 2 | INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE | [] 4 | [] 4 | FOREIGN NATION | [] 6 | [] 6 |

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

Dwain Mitchell
 Pro Se
 4 East 107th Street, #17B
 New York, NY 10029
 New York County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

New York City Department of Education, James E. Johnson, c/o Corporation Counsel of the City of New York, 100 Church Street, New York, NY 10007 (New York County); Daisy Fontanez, former Principal of MS 415 Wadleigh Secondary School for Visual and Performing Arts, 333 7th Avenue, New York, NY 10001 (New York County)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS MANHATTAN

2/20/2020

DATE

Dwain K. Mitchell
 SIGNATURE OF ATTORNEY OF RECORD

Pro Se

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO
 [] YES (DATE ADMITTED Mo. ____ Yr. ____)
 Attorney Bar Code #

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)